

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

LONNIE BILLARD,

Plaintiff,

v.

CHARLOTTE CATHOLIC HIGH SCHOOL,
MECKLENBURG AREA CATHOLIC
SCHOOLS, and ROMAN CATHOLIC
DIOCESE OF CHARLOTTE

Defendants.

Civil Action No. 3:17-cv-0011

PLAINTIFF'S SUPPLEMENTAL AUTHORITY

Pursuant to Local Civil Rule 7.1(j) and this Court's order dated June 16, 2018 (ECF No. 44), Plaintiff Lonnie Billard submits *Jones v. Va. Polytechnic Inst. & State Univ.*, Civil Action No. 7:17-cv-531, 2018 U.S. Dist. LEXIS 163753 (W.D. Va. Sep. 24, 2018) (attached as Ex. A), as supplemental authority in support of Plaintiff's Motion for Partial Summary Judgment (ECF No. 26) and in opposition to Defendants' Motion for Summary Judgment (ECF No. 29).

Plaintiff Lonnie Billard taught drama at Charlotte Catholic High School for more than a decade and continued to work as a substitute teacher after retirement. But after he decided to marry his long-time partner, Defendants fired him "because he is a man who intended to, and did, marry another man," Compl. ¶ 32; Answer ¶ 32. In doing so, Defendants violated Title VII of the Civil Rights Act of 1964, which prohibits covered employers from "fail[ing] or refus[ing] to hire or to discharge any individual . . . because of such individual's . . . sex." 42 U.S.C. § 2000e-2(a)(1). See *Zarda v. Altitude Express, Inc.*, 883 F.3d 100 (2d Cir. 2018) (en banc), *pet.*

for certiorari filed, May 29, 2018; *Hively v. Ivy Tech Cmty. Coll. of Ind.*, 853 F.3d 339, 340 (7th Cir. 2017) (en banc).

The memorandum opinion in *Jones* questions whether *Wrightson v. Pizza Hut of Am., Inc.*, 99 F.3d 138, 143 (4th Cir. 1996) and *Hopkins v. Balt. Gas & Elec. Co.*, 77 F.3d 745, 751-52 (4th Cir. 1996) are controlling precedent in the Fourth Circuit as to whether Title VII covers discrimination based on sexual orientation given developments in the law since they were decided. The opinion first notes that those holdings were dictum that courts have cited as substantive law. *Jones*, 2018 U.S. Dist. LEXIS 163753, at *8-9. It then notes that other circuit courts have ruled against such Title VII claims in the past, but quotes from *Zarda, supra*, that “legal doctrine evolves.” *Id.*, at *9-10. The opinion then reviews subsequent Supreme Court, circuit court and EEOC decisions that contradict *Wrightson* and *Hopkins*. *Id.*, at 10-11

The magistrate opinion deferred ruling on whether it was bound by the *Wrightson* dicta, as it found insufficient factual allegations to support the claim. *Id.* 2018 U.S. Dist. LEXIS 163753, at *12-13. But the decision sets out succinctly the developments in the law on the Title VII issue before this Court since *Wrightson* and *Hopkins*.

CONCLUSION

Plaintiff’s motion for partial summary judgment should be granted, and Defendants’ motion for summary judgment should be denied.

Dated: November 12, 2018

Respectfully submitted,

/s/ S. Luke Largess

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed a copy of forgoing document with the Clerk of Court using the CM/ECF system. All participants in the case are registered CM/ECF users and are hereby served through the CM/ECF system.

Dated: November 12, 2018

/s/ **S. Luke Largess**
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